IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.1050 OF 1998

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

BOTAD VEGETABLE MARKET ASSOCIATION
VERSUS
BOTAD NAGAR PALIKA, BOTAD

Appearance:
MR NAGIN GANDHI for petitioner
MR NK PAHWA for respondent

Coram: MR.JUSTICE S.K. Keshote,J
Date of decision: 09/05/2000

C.A.V. JUDGMENT

#. Heard the learned counsel for the parties.

#. How the court's process is abused by unscrupulous litigants is clearly borne out from this litigation. This is a fourth litigation in succession in the matter. In the first special civil application being No.3852 of 1995, this court has held that the members of the petitioner-association have no right whatsoever to continue to remain on the land in dispute. This court has declined to grant any relief to the members of the petitioner. The special civil application was dismissed. Interim relief granted by the court was vacated. The rest of the other part of the judgment of this court aforesaid is made on the request of the petitioner. However, this court has not decided that the members of the petitioner-association have any right of alternative place to be given to them for business nor this court has given any direction to the respondent to give any alternative place to the members of the petitioner-association for carrying on their business. Second petition has been filed being special civil application No.1710 of 1997 for the same relief and that was withdrawn. The petitioner then filed Regular Civil Suit No.288 of 1997 in the court of Civil Judge (S.D.), Bhavnagar, on 11.4.97, i.e. immediately after disposal of the second petition. In the suit, though application was filed for grant of interim injunction restraining the respondent from evicting the members of petitioner-association from the disputed site, the injunction has not been granted. The matter was taken up in the appeal. The appeal was also dismissed and then this writ petition has been filed by petitioner.

#. In this special civil application, prayer has been made that respondent may not forcefully evict the members of the petitioner-association from the present site. This prayer earlier made by the petitioner was not accepted by this court and the civil court has also not considered it to be a fit case to grant any interim relief. When the petitioner filed the suit, I fail to see how this writ petition is otherwise maintainable. This approach of the petitioner to file successive litigation when this court has finally adjudicated upon the right of the members re.: disputed site is deprecated. Be that as it may, the suit of the petitioner is pending and in case the court has not granted injunction it is hardly any ground to file this special civil application. This special civil application for this relief otherwise is barred by principles analogous to the provisions of Order 2 Rule 2 of Civil Procedure Code. Here fruitfully reference may have to the decision of the apex court in the case of

Upadhyay & Co. v. State of U.P. & Ors., reported in (1999)1 SCC 81 and two decisions of this court in the case of Natwar Textile Processors Pvt. Ltd. & Anr. v. Union of India & Ors., reported in 1990(1) GLR 338 and in the case of Athhavisi Modh Chaturvedignati Panch & Ors. v. State of Gujarat & Ors., reported in 1996(2) GCD 654.

#. The learned counsel for the petitioner contended that it is a case where the members of the petitioner-association have tenancy right of the place at site. It is difficult to accept such a plea in the special civil application for the reason that earlier this court has already decided under its order dated 21st July 1996 in special civil application No.3852 of 1995 that the members of petitioner-association have no right whatsoever to continue to remain on the land. This is not only wholly misconceived writ petitioner but clearly an attempt on the part of the petitioner to abuse the process of the court. The learned counsel for the petitioner is not affirmative also whether the suit filed by petitioner is withdrawn or not. What he stated that he has instructed the petitioner to withdraw the suit.

#. In the result, this special civil application fails and the same is dismissed. Rule discharged. It is a case where exemplary costs are to be awarded to the respondent. The petitioner is directed to pay Rs.5,000/= as costs of this writ petition to the respondent.

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(sunil)